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**FILED**

Date 5/27/15 By Susan Saylor

8 **BEFORE THE**  
9 **STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2015-57

13 **DAVID MICHAEL BORIACK**  
14 **1441 Aster Drive, Unit #31**  
15 **Antioch, CA 94509**

**ACCUSATION**

16 **Field Representative License No. FR 46224**  
17 **Applicator's License No. RA 50879**

Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as  
22 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer  
23 Affairs.

24 2. On or about December 1, 2010, the Structural Pest Control Board issued Field  
25 Representative License Number FR 46224 to David Michael Boriack (Respondent). The Field  
26 Representative License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on June 30, 2016, unless renewed.

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3. On or about May 3, 2010, the Structural Pest Control Board issued Applicator's License Number RA 50879, Branch 3 to David Michael Boriack (Respondent). The Applicator's License expired on May 3, 2013, and has not been renewed.

## JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Code section 8625 states:

"The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration."

## STATUTORY AND REGULATORY PROVISIONS

6. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued..."

7. Code section 8649 states:

"Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof."

8. Code section 8654 states:

"Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any

1 partnership, corporation, firm, or association whose application for a company registration has  
2 been denied for any of the reasons specified in Section 8568, or whose company registration has  
3 been revoked as a result of disciplinary action, or whose company registration is under  
4 suspension, and while acting as such member, officer, director, associate, qualifying manager, or  
5 responsible managing employee had knowledge of or participated in any of the prohibited acts for  
6 which the license or registration was denied, suspended or revoked, shall be prohibited from  
7 serving as an officer, director, associate, partner, qualifying manager, or responsible managing  
8 employee of a registered company, and the employment, election or association of such person by  
9 a registered company is a ground for disciplinary action."

10 9. Cal. Code Regs. tit. 16, section 1937.1, states:

11 "For the purposes of denial, suspension or revocation of a license or company registration  
12 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
13 considered to be substantially related to the qualifications, functions or duties of a licensee or  
14 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it  
15 evidences present or potential unfitness of such licensee or registered company to perform the  
16 functions authorized by the license or company registration in a manner consistent with the public  
17 health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

18 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

19 (b) Commission of any of the following in connection with the practice of structural pest  
20 control:

21 (1) Fiscal dishonesty

22 (2) Fraud

23 (3) Theft

24 (4) Violations relating to the misuse of pesticides."

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1 **COST RECOVERY**

2 10. Code section 125.3 states, in pertinent part, that a Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Criminal Conviction)**

8 11. Respondent's license is subject to discipline pursuant to Section 8649 and 490 in that  
9 he was convicted of a substantially related crime, in that on or about October 7, 2014, in the Santa  
10 Clara County Superior Court, criminal case entitled *People v. David Boriack*, Case No.  
11 B1475088, Respondent was convicted by a plea of no contest to a violation of Penal Code section  
12 459 (misdemeanor) (second degree burglary) and a violation of Health and Safety Code Section  
13 11364.1(misdemeanor) (possession of controlled substance paraphernalia). The circumstances are  
14 as follows:

15 a. On or about May 23, 2014, Respondent entered the Veteran's Administration  
16 Building located at 3801 Miranda Avenue in Palo Alto, California. Respondent was dressed for  
17 pest control work and wore a shirt with the "Terminex" label. Respondent arrived at the location  
18 in a white van marked with the "Terminex" logo however, Respondent was not actually assigned  
19 for work at this location.

20 b. Respondent was observed to be "snooping" around a room at the hospital with a  
21 flashlight. Nurse personnel approached him and inquired what he was doing. Respondent stated  
22 he was looking for "pests." Approximately 3 -5 minutes later, Respondent was observed by nurse  
23 personnel to be attempting to remove "sharps" containers from a medical cart.<sup>1</sup> Law enforcement  
24 was informed of the activity and arrived on the scene to detain and question Respondent who  
25 indicated that he was not working and that he sought the "sharps" containers in order to drain  
26 them for remaining narcotics.

27 <sup>1</sup> A sharps container is a container that is filled with used medical needles (and other sharp  
28 medical instruments).

1 c. Respondent was sentenced as follows: Two (2) years' probation, 30 days in jail and a  
2 fine of \$300.00. Respondent was also ordered to attend Narcotics Anonymous meetings at a  
3 frequency of 3 times per week.

4 **PRAYER**

5 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Structural Pest Control Board issue a decision:

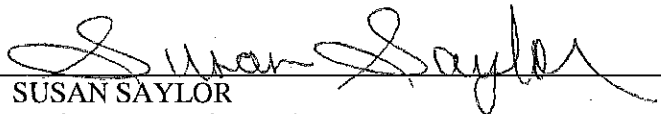
7 1. Revoking or suspending Field Representative License Number FR 46224, issued to  
8 David Michael Boriack

9 2. Revoking or suspending Applicator's License Number RA 50879, issued to David  
10 Michael Boriack;

11 3. Ordering David Michael Boriack to pay the Structural Pest Control Board the  
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
13 Professions Code section 125.3;

14 4. Taking such other and further action as deemed necessary and proper.  
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17

18 DATED: 5/27/15



SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

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